TEH GUAT HONG v. PERBADANAN TABUNG PENDIDIKAN TINGGI NASIONAL

COURT OF APPEAL, PUTRAJAYA
TENGKU MAIMUN TUAN MAT JCA
ABDUL RAHMAN SEBLI JCA
ZALEHA YUSOF JCA
[CIVIL APPEAL NO: W-01(A)-107-04-2016]
16 MAY 2017

ADMINISTRATIVE LAW: *Judicial review – Application to quash decision – Repayment of education loan granted by Perbadanan Tabung Pendidikan Tinggi Nasional ('PTPTN') – Circular by PTPTN allowing exemption for graduates who passed with First Class Honours – Rejection of application for exemption by graduate who passed with First Class Honours – Conditions to qualify for exemption – Whether fulfilled – Whether rejection of application for exemption of repayment irrational and unreasonable*

ADMINISTRATIVE LAW: *Judicial review – Statutory body – Perbadanan Tabung Pendidikan Tinggi Nasional ('PTPTN') – Circular by PTPTN allowing exemption for repayment of education loan by graduates who passed with First Class Honours – Interpretation of circular – Conditions for exemption – Graduate must obtain First Class Honours and attended course which attained certificate of accreditation – Whether there was provision that certificate of accreditation must be obtained during period of study – Intention of Government in introducing policy – Whether for course to attain accreditation – Whether accreditation must relate to whole period of study*

The appeal concerned the interpretation of a circular issued by the Perbadanan Tabung Pendidikan Tinggi Nasional ('PTPTN'), the respondent, namely Pekeliling PTPTN Bilangan 2 Tahun 2003 ('the 2003 Circular'). The appellant obtained an educational loan from the respondent to pursue a Degree in Law ('LLB Course') and graduated in 2002 with a First Class Honours. By a letter dated 5 August 2003 to the respondent, the appellant applied that she be exempted from paying the educational loan. However, nothing happened on the appellant's application until three years later when the appellant received a letter dated 19 June 2006 from the respondent requesting for repayment of the educational loan. The appellant responded to the request for repayment through a letter dated 2 July 2006 making reference to her application in August 2003 for exemption of repayment. The appellant also referred the matter to the Public Complaints Bureau of the Prime Minister's Department. Notwithstanding the respondent's rubber stamp affixed on the appellant's letter dated 5 August 2003, the respondent claimed that it had never received the appellant's application. By its reply dated 31 July 2006, the respondent informed the Public Complaints Bureau that it had only received the appellant's application on 5 July 2006 and that

any borrower who had applied for a loan before 1 July 2005 and had obtained a First Class Honours may apply for the exemption from repayment of the educational loan. On 25 July 2006, the respondent informed the appellant that 'didapati permohonan puan tidak lengkap/silap pengesahan' and the appellant was requested to submit the supporting documents, which the appellant did on 21 August 2006. However, on 13 September 2006, the respondent rejected the appellant's application on the ground that the LLB Course attended by the appellant did not attain the certificate of accreditation. On 5 October 2006, the respondent informed the Public Complaints Bureau that the appellant's application could not be processed as the appellant did not produce a copy of the certificate of accreditation. Acting on the respondent's letter to the Public Complaints Bureau, the appellant *vide* her letter dated 19 August 2007 produced the certificate of accreditation to the respondent. On 24 September 2007, the respondent rejected the appellant's application, reason being that the certificate of accreditation was not issued during the appellant's study. The appellant appealed against the rejection. By its letter dated 27 October 2009, the respondent affirmed the rejection. The appellant again appealed *vide* a letter dated 15 September 2011. More than two years later and after a series of emails from the appellant asking for the status of her appeal, the respondent, by a letter dated 12 February 2014, informed the appellant that 'permohonan bayaran balik puan tidak dapat dipertimbangkan kerana kursus yang mendapat perakuan akreditasi dari Agensi Kelayakan Malaysia (MQA) sahaja yang dapat dipertimbangkan.' In the meantime, the appellant was blacklisted pursuant to a judgment in default obtained against the appellant in a civil suit filed by the respondent in the Sessions Court for repayment of the educational loan. Pursuant to a certificate issued by the respondent to the Director General of Immigration under s. 22A of the Perbadanan Tabung Pendidikan Tinggi Nasional Act 1997 ('PTPTN Act'), the appellant was prevented from leaving the country. The appellant sought leave to file judicial review to quash the respondent's decision on the ground, *inter alia*, that the respondent had acted without jurisdiction and/or outside jurisdiction. Leave was refused by the High Court, but on appeal, the matter was remitted to the High Court for hearing of the substantive application. The High Court, having found that the decision of the respondent was not tainted with illegality and/or irrationality and/or procedural impropriety to merit curial intervention, dismissed the judicial review application. Aggrieved, the appellant appealed and the issues for determination in the appeal were: (i) whether the 2003 Circular applied to the appellant; and (ii) if the 2003 Circular applied, whether the respondent's decision in rejecting the appellant's application for exemption was rational.

Held (allowing appeal with no order as to costs)
Per Tengku Maimun Tuan Mat JCA delivering the judgment of the court:

(1) While the formulation of the 'dasar pinjaman boleh ubah' is a policy, the appeal concerned not with the policy *per se* but the implementation of the said policy. The respondent's interpretation of the 2003 Circular had undoubtedly deprived the appellant of the benefit of exemption. In giving its decision on the exemption of repayment of the educational loan, the respondent was exercising its statutory duty pursuant to s. 19 and/or s. 49(1) of the PTPTN Act. As such, the court disagreed with the High Court Judge that the decision of the respondent was a policy decision and that the court ought not to intervene in the policy decision of the respondent. (paras 34 & 35)

(2) The 2003 Circular must be given its plain and literal meaning unless the literal construction results in absurdity and injustice. In its plain and literal meaning, the 2003 Circular stipulated two conditions to be fulfilled before a graduate of a Private Institution of Higher Learning can enjoy the exemption. The first condition is that the graduate must obtain a First Class Honours and the second condition is that the graduate attended a course which attained a certificate of accreditation. Apart from these two conditions, there were no other conditions stipulated in the 2003 Circular. In particular, there was no provision as regards the time the certificate of accreditation ought to be obtained. (para 37)

(3) The respondent contended the condition for granting the exemption under the 2003 Circular was that the certificate of accreditation must be obtained during the period of the appellant's study. However, condition (b) stated in the respondent's submission, in particular, the words 'sepanjang tempoh pengajian' were not found in the Minister's decision. Significantly, the words, as added to by the respondent in condition (b), were also absent in the earlier correspondence exchanged between the respondent and the appellant and neither did condition (b) appear in the respondent's letters to the Public Complaints Bureau. Nevertheless, in compliance with the respondent's request, on 19 August 2007, the appellant forwarded the certificate of accreditation to the respondent. It was in the respondent's letter of reply dated 24 September 2007 that the condition 'dalam tempoh pengajian pelajar' was made known to the appellant for the first time, and was repeated in the respondent's letter dated 27 October 2007. (paras 38, 39, 40, 45 & 46)

(4) Having regard to the factual matrix and the spirit of the formulation of the policy *ie*, to give recognition to excellent graduates, the focus should be on the words 'kursus yang mendapat Sijil Perakuan Akreditasi ...'. The accreditation must relate to the course itself and not to the period when the graduate was attending the course. To focus on the date when

A the certificate of accreditation was obtained would result in an unfair and absurd situation, which could not have been the intention of the Government when the policy was introduced. This was also fortified by the 2002 Circular as well as the 2005 Circular. The fact that the appellant was granted the loan must necessarily mean that the LLB
B Course had in fact been approved by LAN. (paras 47 & 48)

(5) Further, if it had been the intention of the respondent that the accreditation must relate to the period of study, the respondent would have expressly provided for such requirement in the 2003 Circular. In the absence of such requirement, it was not the respondent's intention
C that the accreditation must relate to the whole period of study. What was intended was the course itself must attain the accreditation. (para 49)

(6) Since the appellant had graduated with a First Class Honours in LLB Course and had been granted the educational loan before 1 July 2005 for the same course, the 2003 Circular applied to the appellant. The
D appellant had rightly made the application for exemption as she undeniably fell under 'mana-mana peminjam yang telah memohon pinjaman di peringkat Ijazah Sarjana Muda sebelum 1 Julai 2005 dan telah mendapat Kepujian Kelas Pertama pada peringkat pengajian yang sama'. The issue of 2003 Circular not having the retrospective effect did
E not arise. Hence, the respondent's decision in rejecting the appellant's application for exemption of repayment of the educational loan was irrational and unreasonable. (paras 51, 52 & 54)

Bahasa Malaysia *Headnotes*

F Rayuan ini berkait dengan tafsiran pekeliling yang dikeluarkan oleh Perbadanan Tabung Pendidikan Tinggi Nasional ('PTPTN'), responden, iaitu Pekeliling PTPTN Bilangan 2 Tahun 2003 ('Pekeliling 2003'). Perayu memperoleh pinjaman pendidikan daripada responden untuk melanjutkan pelajaran dalam bidang Sarjana Muda Undang-Undang ('Kursus LLB') dan
G memperoleh ijazah pada 2002 dengan Ijazah Kelas Pertama. Melalui surat bertarikh 5 Ogos 2003 kepada responden, perayu memohon agar dikecualikan daripada membayar balik pinjaman pendidikan tersebut. Walau bagaimanapun, tiada apa-apa yang berlaku pada permohonan perayu sehingga tiga tahun kemudian apabila perayu menerima surat bertarikh 19 Jun 2006 daripada responden menuntut bayaran balik pinjaman pendidikan.
H Perayu membalas tuntutan pembayaran balik dengan surat bertarikh 2 Julai 2006 yang merujuk permohonan pengecualiannya pada Ogos 2003. Perayu juga merujuk perkara tersebut kepada Biro Aduan Awam Jabatan Perdana Menteri. Walaupun terdapat cap tarikh pada surat perayu bertarikh 5 Ogos 2003, responden menyatakan tidak pernah menerima permohonan
I perayu. Melalui balasannya bertarikh 31 Julai 2006, responden memaklumkan Biro Aduan Awam bahawa responden hanya menerima

permohonan perayu pada 5 Julai 2006 dan bahawa mana-mana peminjam yang memohon pinjaman sebelum 1 Julai 2005 dan memperoleh Ijazah Kelas Pertama boleh memohon pengecualian pembayaran balik pinjaman pendidikan. Pada 25 Julai 2006, responden memaklumkan perayu bahawa 'didapati permohonan puan tidak lengkap/silap pengesahan' dan perayu diminta mengemukakan dokumen-dokumen sokongan, yang dibuat perayu pada 21 Ogos 2006. Walau bagaimanapun, pada 13 September 2006, responden menolak permohonan perayu atas alasan Kursus LLB yang dihadiri perayu tidak memperoleh perakuan akreditasi. Pada 5 Oktober 2006, responden memaklumkan Biro Aduan Awam bahawa permohonan perayu tidak boleh diproses kerana perayu tidak mengemukakan perakuan akreditasi. Bertindak atas surat responden kepada Biro Aduan Awam, perayu, melalui suratnya yang bertarikh 19 Ogos 2007, mengemukakan perakuan akreditasi kepada responden. Pada 24 September 2007, responden menolak permohonan perayu, atas alasan perakuan akreditasi tidak dikeluarkan semasa pengajian perayu. Perayu merayu terhadap penolakan itu. Melalui suratnya yang bertarikh 27 Oktober 2009, responden mengesahkan penolakan itu. Perayu merayu lagi melalui surat bertarikh 15 September 2011. Lebih dua tahun kemudian dan selepas beberapa e-mel daripada perayu meminta status rayuannya, responden, melalui surat bertarikh 12 Februari 2014, memaklumkan perayu bahawa 'permohonan bayaran balik puan tidak dapat dipertimbangkan kerana kursus yang mendapat perakuan akreditasi dari Agensi Kelayakan Malaysia (MQA) sahaja yang dapat dipertimbangkan.' Sementara itu, perayu disenaraihitamkan berikutan penghakiman ingkar yang diperoleh terhadap perayu dalam guaman sivil yang difailkan oleh responden di Mahkamah Sesyen bagi pembayaran balik pinjaman pendidikan. Berikutan sijil yang dikeluarkan oleh responden kepada Ketua Pengarah Imigresen bawah s. 22A Akta Perbadanan Tabung Pendidikan Tinggi Nasional 1997 ('Akta PTPTN'), perayu dilarang keluar dari negara. Perayu memohon kebenaran memfailkan semakan kehakiman untuk membatalkan keputusan responden atas alasan, antara lain, bahawa responden bertindak tanpa bidang kuasa dan/atau luar bidang kuasa. Permohonan kebenaran ditolak oleh Mahkamah Tinggi, tetapi atas rayuan, perkara tersebut dikembalikan ke Mahkamah Tinggi bagi perbicaraan permohonan substantif. Mahkamah Tinggi, selepas mendapati bahawa keputusan responden tidak tercemar dengan ketidakadilan dan/atau ketidakrasionalan dan/atau ketidakpatuhan prosedur yang mewajarkan campur tangan pembetulan, menolak permohonan semakan kehakiman. Terkilan, perayu merayu dan isu-isu bagi pemutusan dalam rayuan ini adalah: (i) sama ada Pekeliling 2003 terpakai pada perayu; dan (ii) jika Pekeliling 2003 terpakai, sama ada keputusan responden menolak permohonan perayu untuk pengecualian rasional.

A B C D E F G H I

Diputuskan (membenarkan rayuan tanpa perintah untuk kos)
Oleh Tengku Maimun Tuan Mat HMR menyampaikan penghakiman mahkamah:

(1) Oleh sebab formulasi 'dasar pinjaman boleh ubah' adalah suatu polisi, rayuan ini tidak berkait dengan polisi itu sendiri tetapi pelaksanaan polisi itu. Tafsiran Pekeliling 2003 oleh responden tidak diragui telah menafikan perayu faedah pengecualian. Dalam memberikan keputusannya berkaitan dengan pengecualian pembayaran balik pinjaman pendidikan, responden melaksanakan kewajipan statutorinya menurut s. 19 dan/atau 49(1) Akta PTPTN. Oleh itu, mahkamah tidak bersetuju dengan Hakim Mahkamah Tinggi bahawa keputusan responden adalah keputusan polisi dan mahkamah tidak wajar campur tangan dalam keputusan polisi responden.

(2) Pekeliling 2003 mesti diberikan maksud biasa dan harfiah kecuali pentafsirannya menjurus pada kemustahilan dan ketidakadilan. Dalam maksud biasa dan harfiah, Pekeliling 2003 memperuntukkan dua syarat yang mesti dipenuhi sebelum seorang siswazah Institusi Pengajian Tinggi Swasta boleh mendapat pengecualian. Syarat pertama adalah siswazah tersebut mesti mendapat Ijazah Kelas Pertama dan syarat kedua adalah siswazah tersebut menghadiri kursus yang mencapai perakuan akreditasi. Selain dua syarat ini, tiada syarat lain yang dinyatakan dalam Pekeliling 2003, khususnya, tiada peruntukan berkaitan dengan masa perakuan akreditasi diperoleh.

(3) Responden menghujahkan bahawa syarat bagi pengecualian bawah Pekeliling 2003 adalah, perakuan akreditasi mesti diperoleh semasa tempoh pengajian perayu. Walau bagaimanapun, syarat (b) yang dinyatakan dalam hujahan responden, khususnya, perkataan-perkataan 'sepanjang tempoh pengajian' tidak didapati dalam keputusan Menteri. Secara pentingnya, perkataan-perkataan tersebut, seperti yang ditambah oleh responden dalam syarat (b), juga tiada dalam surat-menyurat awalan antara responden dan perayu dan syarat (b) juga tidak kelihatan dalam surat-surat responden kepada Biro Aduan Awam. Walau bagaimanapun, sebagai pematuhan terhadap permintaan responden, pada 19 Ogos 2007, perayu mengemukakan perakuan akreditasi kepada responden. Hanya dalam surat balasan responden bertarikh 24 September 2007, syarat 'dalam tempoh pengajian pelajar' dimaklumkan kepada perayu bagi pertama kalinya, dan diulangi dalam surat responden bertarikh 27 Oktober 2007.

(4) Mempertimbangkan fakta matriks dan maksud formulasi polisi itu iaitu, untuk memberi pengiktirafan kepada siswazah-siswazah cemerlang, fokus adalah pada perkataan-perkataan 'kursus yang mendapat Sijil

Perakuan Akreditasi ...' Akreditasi tersebut mesti merujuk pada kursus sahaja dan bukan tempoh masa bila siswazah menghadiri kursus. Fokus pada tarikh bila perakuan akreditasi diperoleh akan menjurus pada situasi tidak adil dan tidak masuk akal, yang tidak mungkin menjadi niat Kerajaan bila polisi itu diperkenalkan. Perkara ini juga diperkukuhkan oleh Pekeliling 2002 dan juga Pekeliling 2005. Fakta bahawa perayu diberikan pinjaman perlu membawa maksud bahawa Kursus LLB sememangnya mendapat kelulusan LAN.

(5) Selanjutnya, jika niat responden adalah bahawa akreditasi perlu berkait dengan tempoh pengajian, responden akan menyatakan keperluan itu dengan jelas dalam Pekeliling 2003. Tanpa keperluan itu, bukan niat responden bahawa akreditasi tersebut perlu berkait dengan keseluruhan tempoh pengajian. Apa yang diniatkan adalah kursus itu sendiri mesti mencapai akreditasi.

(6) Oleh sebab perayu lulus dengan Ijazah Kelas Pertama dalam Kursus LLB, dan telah diberikan pinjaman pendidikan sebelum 1 Julai 2005 bagi kursus itu, Pekeliling 2003 terpakai bagi perayu. Perayu telah, dengan sewajarnya, membuat permohonan bagi pengecualian kerana dia, tidak dinafikan, terangkum bawah 'mana-mana peminjam yang telah memohon pinjaman di peringkat Ijazah Sarjana Muda sebelum 1 Julai 2005 dan telah mendapat Kepujian Kelas Pertama pada peringkat pengajian yang sama'. Tidak timbul isu bahawa Pekeliling 2003 tidak mempunyai kesan retrospektif. Oleh itu, keputusan responden menolak permohonan perayu bagi pengecualian pembayaran balik pinjaman pendidikan tidak rasional dan tidak munasabah.

Case(s) referred to:

Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 5 CLJ 865 FC ***(refd)***

Council of Service Unions & Ors v. Minister for the Civil Service [1985] 1 AC 374 ***(refd)***

Dr Michael Jeyakumar Devaraj v. Peguam Negara Malaysia [2013] 2 CLJ 1009 FC ***(refd)***

Marcel Jude Joseph & Anor v. The Minister of Education & Ors [2013] 1 CLJ 1106 HC ***(refd)***

Merdeka University Bhd v. Government of Malaysia [1981] CLJ 175; [1981] CLJ (Rep) 191 HC ***(refd)***

Teh Guat Hong lwn. Perbadanan Tabung Pendidikan Tinggi Nasional [2013] 1 LNS 1465 HC ***(refd)***

Legislation referred to:

Lembaga Akreditasi Negara Act 1996, s. 2

Perbadanan Tabung Pendidikan Tinggi Nasional Act 1997, ss. 19, 22A, 49(1), 49A

A *For the appellant - Irwin Lo & Adelin Phung; M/s Lo Chambers*
For the respondent - Hazizah Kassim & Nurul Fathihah Zainal Abidin; M/s Hazizah & Co

[Editor's note: For the High Court judgment, please see Teh Guat Hong lwn. Perbadanan Tabung Pendidikan Tinggi Nasional [2013] 1 LNS 1465 (overruled).]

B *Reported by S Barathi*

JUDGMENT

Tengku Maimun Tuan Mat JCA:

C **[1]** This appeal concerned the interpretation of a circular issued by the Perbadanan Tabung Pendidikan Tinggi Nasional ("PTPTN"), namely Pekeliling PTPTN Bilangan 2 Tahun 2003 ("the 2003 Circular"). For the reasons that follow, we had resolved the interpretation in favour of the appellant and as a consequence, had allowed the appellant's appeal.

D **The Background Facts**

[2] The appellant obtained an educational loan from PTPTN ("the respondent") to pursue a Degree in Law ("the LLB Course") from the University of London at a Private Institute of Higher Learning known as Kemayan Advance Tertiary College ("Kemayan ATC"). The appellant E graduated in 2002 with a First Class Honours.

[3] In 2003, the respondent issued the 2003 Circular which reads:

PEKELILING PTPTN BILANGAN 2 TAHUN 2003

F PERLAKSANAAN PELEPASAN BAYARAN BALIK PINJAMAN PENDIDIKAN BAGI PELAJAR-PELAJAR YANG MENDAPAT KEPUJIAN KELAS PERTAMA

Adalah dimaklumkan bahawa PTPTN telah melaksanakan dasar pinjaman boleh ubah untuk pelajar-pelajar Institut Pendidikan Tinggi Awam (IPTA) dan Institut Pendidikan Tinggi Swasta (IPTS) peringkat Ijazah Sarjana G Muda yang mendapat keputusan Kepujian Kelas Pertama. Walau bagaimanapun untuk pelajar-pelajar IPTS, hanya terhad kepada pelajar-pelajar yang mengikuti kursus yang mendapat Sijil Perakuan Akreditasi daripada Lembaga Akreditasi Negara (LAN), Kementerian Pendidikan Malaysia.

H 2. Untuk membolehkan surat pelepasan bayaran balik dikeluarkan, pelajar-pelajar berkaitan dikehendaki mengemukakan kepada PTPTN dokumen-dokumen berikut yang telah disahkan oleh Bahagian Akademik IPTA atau IPTS masing-masing:

(i) Salinan keputusan peperiksaan setiap semester pengajian.

I (ii) Salinan Ijazah Kepujian Kelas Pertama.

3. Pelajar-pelajar yang menerima penajaan lain di samping pinjaman PTPTN, menukar jurusan, peringkat pengajian dan IPT tanpa kelulusan PTPTN atau melanggar mana-mana syarat yang ditetapkan dalam perjanjian pinjaman pendidikan, tidak akan dipertimbangkan untuk kemudahan pelepasan bayaran balik pinjaman.

[4] By a letter dated 5 August 2003 to the respondent, the appellant applied that she be exempted from paying the educational loan.

[5] The appellant's letter dated 5 August 2003 was acknowledged receipt by the respondent on 7 August 2003.

[6] Nothing happened on the appellant's application until about three years later when the appellant received a letter dated 19 June 2006 from the respondent requesting for repayment of the educational loan.

[7] The appellant responded to the request for repayment through a letter dated 2 July 2006 making reference to her application in August 2003 for exemption of repayment. The appellant also referred the matter to the Public Complaints Bureau of the Prime Minister's Department.

[8] Notwithstanding the respondent's rubber stamp affixed on the appellant's letter dated 5 August 2003, the respondent claimed that it had never received the appellant's application. By its reply to Public Complaints Bureau dated 31 July 2006, the respondent informed the Public Complaints Bureau that it had only received the appellant's application on 5 July 2006. The Public Complaints Bureau was further informed that any borrower who had applied for a loan before 1 July 2005 and had obtained a First Class Honours may apply for the exemption from repayment of the educational loan.

[9] On 25 July 2006, the respondent informed the appellant that "didapati permohonan tuan tidak lengkap/silap pengesahan". The appellant was requested to submit the supporting documents.

[10] The appellant resubmitted the application to the respondent on 21 August 2006.

[11] On 13 September 2006, the respondent rejected the appellant's application on the ground that the LLB Course attended by the appellant did not attain the certificate of accreditation. On 5 October 2006, the respondent informed the Public Complaints Bureau that the appellant's application could not be processed as the appellant did not produce a copy of the certificate of accreditation.

[12] Acting on the respondent's letter to the Public Complaints Bureau, the appellant *vide* her letter dated 19 August 2007 produced the certificate of accreditation to the respondent.

[13] On 24 September 2007, the respondent rejected the appellant's application, reason being that the certificate of accreditation was not issued during the appellant's study.

[14] The appellant appealed against the rejection. By its letter dated 27 October 2009, the respondent affirmed the rejection.

[15] The appellant again appealed *vide* a letter dated 15 September 2011 which was acknowledged receipt by the respondent on 23 November 2011. More than two years later and after a series of emails from the appellant asking for the status of her appeal, the respondent by a letter dated 12 February 2014 informed the appellant that "permohonan bayaran balik puan tidak dapat dipertimbangkan kerana kursus yang mendapat perakuan akreditasi dari Agensi Kelayakan Malaysia (MQA) sahaja yang dapat dipertimbangkan".

[16] In the meantime in 2010, the respondent filed a civil suit in the Sessions Court at Kuala Lumpur for repayment of the educational loan. A judgment in default was obtained against the appellant. Consequent thereto, the appellant was blacklisted. Pursuant to a certificate issued by the respondent to the Director General of Immigration under s. 22A of the Perbadanan Tabung Pendidikan Tinggi Nasional Act 1997 ("the PTPTN Act"), the appellant was prevented from leaving the country.

The Judicial Review Application

[17] In the High Court, the appellant sought leave to file judicial review to quash the respondent's decision on the ground amongst others that the respondent had acted without jurisdiction and/or outside jurisdiction. Some of the reasons given why the respondent was said to have acted without or outside jurisdiction were the following:

(i) the rejection of the appellant's appeal despite the appellant having obtained the Degree of Laws with First Class Honours;

(ii) the imposition or interpretation of a condition which contradicted its own action; and

(iii) the imposition of the additional condition and/or requirement to prevent the appellant from benefiting from the exemption for repayment provision under the 2003 Circular.

[18] Leave was refused by the High Court. On appeal to this court, the appeal was allowed and the matter was remitted to the High Court for hearing of the substantive application.

[19] On the hearing of the substantive application, the learned High Court Judge considered the law on judicial review and reminded herself that the review is restricted to the decision-making process and not the merits or the

correctness of the decision. The learned judge further reminded herself of the settled law that to qualify as a subject for judicial review, the decision, action and/or omission must have the effect of altering the rights or obligations of the appellant and must have deprived the appellant of some benefit or advantage.

[20] In determining whether the respondent's decision was tainted with illegality, irrationality or procedural impropriety as described by Lord Diplock in *Council of Service Unions & Ors v. Minister for the Civil Service* [1985] 1 AC 374, the learned judge took into account the fact that the appellant graduated with a First Class Honours on 1 August 2002 and that the certificate of accreditation attained by Kemayan ATC was with effect from 27 February 2006 and valid up to 26 February 2011. Since at the time the appellant graduated with a First Class Honours Degree in Laws, the said course has not yet been accorded with the certificate of accreditation by LAN, Her Ladyship concluded that the appellant was not entitled to the benefit of the 2003 Circular.

[21] Her Ladyship also considered the letter from LAN/Malaysian Qualifications Agency ("MQA") which confirmed that the certificate of accreditation issued to the LLB Course at Kemayan ATC did not have retrospective effect.

[22] Relying on *Marcel Jude Joseph & Anor v. The Minister of Education & Ors* [2013] 1 CLJ 1106; *Dr Michael Jeyakumar Devaraj v. Peguam Negara Malaysia* [2013] 2 CLJ 1009 and *Merdeka University Bhd v. Government of Malaysia* [1981] CLJ 175; [1981] CLJ (Rep) 191 the learned judge further held that the decision which the appellant was seeking to quash involved a policy decision and that the court would not be in a position to decide on the appropriateness or adequacy of any particular policy of the Government.

[23] Having found that the decision of the respondent was not tainted with illegality and/or irrationality and/or procedural impropriety to merit curial intervention, the judicial review application was dismissed.

[24] Aggrieved by the decision, the appellant appealed to this court and as indicated at the outset, we had allowed the appeal.

The Appeal

[25] Learned counsel for the appellant submitted that the learned judge erred in law and in fact in holding that the impugned decision is a policy consideration matter which was not amenable to judicial review. According to learned counsel, the appellant has no dispute with regards to the policy but the appellant's complaint is that the respondent has failed to interpret and apply the policy appropriately. In other words, the challenge was not on the policy itself but on the implementation of the policy.

[26] Learned counsel argued that the 2003 Circular, as decided by this court in the appeal concerning the leave, is amenable to judicial review if it contains sufficient element of public law. And to determine whether it contains sufficient element of public law, guidance is found in the decision of the Federal Court in *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 5 CLJ 865; [2010] 3 MLJ 145 that "it is necessary to examine both the source of power and nature of the decision made".

[27] In the instant appeal, the impugned decision was made pursuant to the 2003 Circular. The 2003 Circular has legislative effect as it was enacted pursuant to s. 19 and/or s. 49 of the PTPTN Act and it is regarded as a subsidiary legislation as termed in s. 49A of the PTPTN Act and has a force of law.

[28] Learned counsel for the appellant argued that in refusing to allow exemption to the appellant, the respondent acted arbitrarily and irrationally for the following reasons:

(a) the respondent misinterpreted the 2003 Circular by imposing a requirement that the certificate of accreditation had to be attained during the appellant's study;

(b) the respondent failed to interpret the 2003 Circular consistently with its other circulars, namely the Pekeliling PTPTN Bilangan 1 Tahun 2002 ("the 2002 Circular") and the Pekeliling PTPTN Bilangan 1 Tahun 2005 ("the 2005 Circular").

(c) the respondent failed to consider the true purpose and objective of accreditation.

[29] For the respondent, learned counsel submitted that the learned judge was correct in finding that the decision sought to be quashed by the appellant was a policy decision which the court would generally be reluctant to intervene. Learned counsel echoed the learned judge's finding that based on the 2003 Circular, the appellant was not entitled to the exemption as the certificate of accreditation was not attained during her period of study.

[30] Learned counsel also argued that the respondent's decision in rejecting the appellant's application did not suffer from procedural impropriety as the conditions for the exemption had not been satisfied.

Our Findings

[31] The following were the issues for our determination:

(i) whether the 2003 Circular applies to the appellant; and

(ii) if the circular applies, whether the respondent's decision in rejecting the appellant's application for exemption was irrational.

[32] Before we proceed with the issues, we wish to deal firstly with the finding of the learned judge that the decision of the respondent involved a policy of the Government which would not be appropriate for the court to intervene.

[33] In allowing the appeal against the refusal of the High Court to grant leave, the earlier panel of this court decided amongst others that the 2003 Circular had a force of law as it was made pursuant to the PTPTN Act; that the 2003 Circular is thereby regarded as a subsidiary legislation binding on the parties and as such the decision made pursuant to the 2003 Circular was amenable to judicial review (see *Teh Guat Hong lwn. Perbadanan Tabung Pendidikan Tinggi Nasional* [2013] 1 LNS 1465; [2015] 3 AMR 35).

[34] In our view, while the formulation of the 'dasar pinjaman boleh ubah' is a policy, the appeal before us concerned not with the policy *per se* but the implementation of the said policy. The respondent's interpretation of the 2003 Circular had undoubtedly deprived the appellant of the benefit of exemption and more importantly, we found no basis to depart from the earlier findings of this court that the decision of the respondent was susceptible to judicial review. In giving its decision on the exemption of repayment of the educational loan, the respondent was exercising its statutory duty pursuant to s. 19 and/or s. 49(1) of the PTPTN Act which respectively provides:

Power of Minister to give directions

19(1) The Board shall be responsible to the Minister.

(2) The Minister may give direction not inconsistent with the provisions of this Act to the Board from time to time.

(3) The Board shall give effect to all directions given under this section as soon as possible.

Power to make regulations

49(1) The Perbadanan, with the approval of the Minister, may make such regulations as may be expedient or necessary for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for prescribing:

(ha) the responsibilities, conditions, and the procedure for the grant of educational loans to any recipient student:

[35] As such, we disagreed with the learned High Court Judge that the decision of the respondent was a policy decision and that the court ought not to intervene in the policy decision of the respondent.

[36] Coming back to the issue whether or not the 2003 Circular applies to the appellant, it was our judgment that the answer lies in the interpretation of the words "pelajar-pelajar yang mengikuti kursus yang mendapat Sijil Perakuan Akreditasi daripada Lembaga Akreditasi Negara ..." which is found in the first paragraph of the 2003 Circular.

[37] In this regard, we took the position that the 2003 Circular must be given its plain and literal meaning unless the literal construction results in absurdity and injustice. In its plain and literal meaning, the 2003 Circular stipulates two conditions to be fulfilled before a graduate of a Private Institution of Higher Learning can enjoy the exemption. The first condition is that the graduate must obtain a First Class Honours and the second condition is that the graduate attended a course which attained a certificate of accreditation. Apart from these two conditions, there are no other conditions stipulated in the 2003 Circular. To be more specific, the 2003 Circular makes no provision as regards the time the certificate of accreditation was obtained.

[38] The respondent's contention which the learned judge agreed was that the appellant was not entitled to the exemption because the certificate of accreditation was obtained after the appellant had completed her study whereas the condition for granting the exemption under the 2003 Circular is that the certificate must be obtained during the period of the appellant's study. The gist of the respondent's submission is captured below:

> Syarat yang dikenakan bagi mendapat pengecualian bayaran balik pinjaman bagi pelajar IPTS sepertimana yang terdapat di dalam dasar Jemaah Menteri dan Pekeliling 2003 Eksibit E ialah seperti berikut:
>
> (a) Mendapat kelas pertama bagi Ijazah Sarjana Muda; dan
>
> (b) Kursus yang diikuti sepanjang tempoh pengajian mendapat Sijil Perakuan Akreditasi LAN.

[39] Contrary to the submission of learned counsel for the respondent, condition (b) in particular, the words "sepanjang tempoh pengajian" were not found in the Minister's decision (as reproduced by the respondent in its affidavit) which reads:

> Bagi pelajar-pelajar IPTS, Menteri Pendidikan meminta supaya pelepasan hanya diberikan kepada pelajar-pelajar yang mengikuti kursus pengajian yang mendapat Sijil Perakuan Akreditasi Negara (LAN). PTPTN hendaklah merujuk kepada Jabatan Pendidikan Swasta sekiranya terdapat keraguan mengenai pemberian Ijazah Kelas Pertama dari IPTS tertentu.

[40] Significantly, the words "sepanjang tempoh pengajian" as added to by the respondent in condition (b) were also absent in the earlier correspondence exchanged between the respondent and the appellant and neither did condition (b) appear in the respondent's letters to the Public Complaints Bureau.

[41] For ease of reference, we reproduce the relevant letters below. The first is the letter from the appellant to the respondent dated 5 August 2003 wherein the appellant wrote: (Rekod Rayuan Bhg C Jld 3: pp. 187-188):

> Tuan,
>
> **Pelepasan Bayaran Balik Pinjaman bagi Pelajar yang Mendapat Kepujian Kelas Pertama**
>
> Perkara di atas dan Pekeliling PTPTN Bilangan 2 Tahun 2003 dirujuk dengan segala hormatnya.
>
> 2. Saya seorang pelajar jurusan Undang-Undang yang telah mengikuti kursus LLB yang ditawarkan oleh Univiersiti London di Kemayan ATC dan telah tamat pengajian pada tahun 2002 dengan kepujian Kelas Pertama.
>
> 3. Berikutan lawatan saya ke PTPTN baru-baru ini, saya telah diberitahu oleh Encik Hasrul Nizam daripada bahagian IPTS bahawa pelajar yang mendapat kepujian kelas pertama di IPTS boleh memohon untuk pelepasan bayaran balik pinjaman pendidikan.
>
> 4. Sehingga tamat pengajian, saya telah menerima sejumlah pinjaman sebanyak RM48,000.00 (Empat Puluh Lapan Ribu Sahaja) walaupun jumlah yang diluluskan untuk permohonan saya adalah sebanyak RM64,000.00 (Enam Puluh Empat Ribu Sahaja).
>
> 5. Saya ingin memohon jasa baik tuan untuk mempertimbangkan permohonan pelepasan bayaran balik pinjaman sebanyak RM48,000.00 yang disebutkan. Bersama-sama ini, saya sertakan untuk rujukan tuan:
>
> a) Salinan keputusan peperiksaan setiap semester pengajian (Transkrip)
>
> b) Salinan Ijazah Kelas Pertama daripada University of London
>
> c) Keratan suratkhabar New Sunday Times, 1st September 2002.
>
> 6. Pertimbangan daripada pihak tuan dihargai dan saya dahului dengan ucapan ribuan terima kasih.

[42] It is pertinent to note that the appellant's assertion in para. 3 quoted above was not denied by the respondent. Be that as it may, by its letter dated 13 September 2006, the respondent replied as follows where the respondent made no mention of the condition or requirement that the accreditation must be attained during the appellant's period of study (Rekod Rayuan Bhg C Jld 3: p. 143):

> 2. Untuk makluman tuan, berdasarkan Pekeliling PTPTN Bil. 2 Tahun 2003 "Pelaksanaan pelepasan bayaran balik pinjaman pendidikan bagi pelajar yang mendapat kelas pertama bagi pelajar IPTS adalah terhad kepada pelajar-pelajar yang mengikuti kursus yang mendapat Sijil Perakuan Akreditasi daripada Lembaga Akreditasi Negara (LAN) sahaja. (rujuk lampiran)

A 3. Setelah semakan dibuat, pihak Perbadanan mendapati kursus yang diikuti oleh pihak tuan tidak mendapat sijil Perakuan Akreditasi, maka permohonan tuan tidak dapat dipertimbangkan dan tuan masih tertakluk membayar balik pinjaman yang dinyatakan di dalam Perjanjian Pinjaman yang telah ditandatangani.

B **[43]** Further, in its letter dated 5 October 2006 to the Public Complaints Bureau, the respondent states (Rekod Rayuan Bhg C Jld 3: p. 144):

2. Adalah dimaklumkan bahawa Perbadanan telah menerima permohonan peminjam pada 05 Ogos 2006. Walau bagaimanapun semakan Perbadanan mendapati permohonan tersebut tidak boleh diproses kerana tidak
C memenuhi syarat yang telah ditetapkan oleh Perbadanan iaitu tidak mengemukakan salinan sijil Lembaga Akreditasi Negara (LAN). Peminjam telah dimaklumkan mengenai perkara ini melalui surat Perbadanan bertarikh 13 September 2006.

3. Dasar Perbadanan telah menetapkan hanya kursus yang diiktiraf oleh Lembaga Akreditasi Negara sahaja yang akan dipertimbangkan untuk
D pengecualian bayaran balik pinjaman. Sekiranya peminjam mengemukakan salinan sijil LAN yang mengesahkan bahawa kursus beliau mendapat pengiktirafan LAN, maka pihak Perbadanan tidak ada halangan untuk mempertimbangkan permohonan beliau.

[44] In the above letter, the respondent similarly made no mention of the
E requirement that the certificate of accreditation must be obtained during the appellant's study. What was mentioned was merely "kursus beliau mendapat pengiktirafan LAN". Nothing was stated about "kursus yang diikuti sepanjang tempoh pengajian". We also noted that in its letter to the Public Complaints Bureau, the respondent stated that the appellant's application
F could not be processed as the appellant failed to forward the certificate of accreditation, when there is no such requirement under the 2003 Circular. Paragraph 2 of the 2003 Circular reads:

2. Untuk membolehkan surat pelepasan bayaran balik dikeluarkan, pelajar-pelajar berkaitan dikehendaki mengemukakan kepada PTPTN dokumen/
G dokumen berikut yang telah disahkan oleh Bahagian Akademik IPTA atau IPTS masing-masing:

(i) Salinan keputusan peperiksaan setiap semester pengajian.

(ii) Salinan Ijazah Kepujian Kelas Pertama.

H **[45]** Nevertheless, in compliance with the respondent's request, on 19 August 2007 the appellant forwarded the certificate of accreditation to the respondent. The respondent's reply came as follows *vide* its letter dated 24 September 2007 (Rekod Rayuan Bhg C Jld 3: p. 237):

3. … Perbadanan telah menerima permohonan daripada tuan untuk
I pengecualian bayaran balik pinjaman tetapi tidak memenuhi syarat yang telah ditetapkan. Oleh yang demikian pihak Perbadanan memohon pengesahan sama ada Kursus Bachelor of Law (University of London)

bagi tahun 2000 sehingga 2002 (dalam tempoh pengajian pelajar) mempunyai kelulusan Perakuan Akreditasi penuh daripada Lembaga Akreditasi Negara (LAN). Sekiranya kursus tersebut mempunyai kelulusan mohon dilampirkan bersama sijil kelulusan daripada LAN kepada pihak Perbadanan.

[46] That was the first time that the condition "dalam tempoh pengajian pelajar" was made known to the appellant and which was repeated in the respondent's letter dated 27 October 2007 which reads (Rekod Rayuan Bhg C: p. 212):

2. Berdasarkan semakan tarikh Perakuan Akreditasi bagi kursus Bachelor of Law (external) University of London adalah 27/02/2006 sehingga 26/02/2011. Ini bermakna, Ijazah yang diperolehi sebelum tarikh tersebut tidak mendapat perakuan akreditasi. Oleh kerana permohonan tuan tidak memenuhi kriteria seperti di atas, permohonan tuan tidak dapat dipertimbangkan.

[47] Having regard to the factual matrix and the spirit of the formulation of the policy ie, to give recognition to excellent graduates, we formed the view that the focus should be on the words "kursus yang mendapat Sijil Perakuan Akreditasi ...". In other words, the accreditation must relate to the course itself and not to the period when the graduate was attending the course. To focus on the date when the certificate of accreditation was obtained would result in unfairness and absurd situation. Take this scenario. A First Class Honours graduate attended the LLB course at Kemayan ATC between 2004 and 2008. The certificate of accreditation covers only part of the graduate's period of study. Going by the respondent's interpretation of the 2003 Circular, the graduate would not be exempted under the 2003 Circular as the accreditation was not attained "sepanjang tempoh pelajar menjalani kursus". Surely this cannot be the intention of the Government when the policy "memberi pengiktirafan kepada pelajar cemerlang" was introduced. There is only one LLB Course and we do not think it is rational to sever the course, more so when accreditation is only a formal recognition as defined in s. 2 of the Lembaga Akreditasi Negara Act 1996 which reads:

"accreditation" means a formal recognition of the fact that the certificates, diplomas and degrees awarded by private higher educational institutions, or by other educational institutions or professional bodies consequent upon a course of study or training programme conducted by a private higher educational institution jointly or in affiliation, association or collaboration with such other educational institutions or professional bodies, are in accordance with the standard set by the Lembaga:

[48] That the focus was not on the timing of the accreditation in our view is fortified by Circular 2002 where in granting educational loan, the respondent had imposed the condition that graduates from Private Institution of Higher Learning "telah mendaftar untuk mengikuti kursus peringkat

diploma atau Ijazah Sarjana Muda yang diluluskan Lembaga Akreditasi Negara (LAN) dan Jabatan Pendidikan Swasta (JPS), Kementerian Pendidikan." The fact that the appellant was granted the loan must necessarily mean that the LLB Course had in fact been approved by LAN. That the date when the certificate of accreditation was obtained was not significant can also be seen in the 2005 Circular amending the conditions for the application of the educational loan where it states:

> 3.1 Syarat-syarat kelayakan memohon pinjaman pendidikan yang dipinda adalah seperti berikut:
>
> (vi) Bagi pelajar-pelajar IPTS, mereka hendaklah telah mendaftar untuk mengikuti kursus yang diluluskan oleh Jabatan Pengurusan IPT (Sektor Pengurusan IPTS), Kementerian Pengajian Tinggi dan telah mendapat Sijil Perakuan Akreditasi daripada Lembaga Kelayakan Negara (LAN). Kelulusan kursus dan Sijil Perakuan Akreditasi hendaklah belum tamat tempoh sah laku semasa permohonan dikemukakan. IPTS yang belum mendapatkan Sijil Perakuan Akreditasi bagi kursus-kursus yang dijalankan masih dibenarkan mengemukakan permohonan pinjaman untuk pelajar-pelajar mereka sebelum 1 Julai 2006.

[49] In our judgment, if it had been the intention of the respondent that the accreditation must relate to the period of study, the respondent would have expressly provided for such requirement in the 2003 Circular. In the absence of such requirement, we concluded that it was not the respondent's intention that the accreditation must relate to the whole period of study. What was intended was the course itself must attain the accreditation.

[50] Consistent with our view, the respondent had in fact explicitly stated the criteria or condition for the application for exemption of the educational loan in its letter dated 31 July 2006 to the Public Complaints Bureau without the condition that the whole period of study must be covered by the certificate of accreditation. The letter reads:

> ... sukacita dimaklumkan berdasarkan peraturan Perbadanan, mana-mana peminjam yang telah memohon pinjaman di peringkat Ijazah Sarjana Muda sebelum 01 Julai 2005 dan mendapat Kepujian Kelas Pertama pada peringkat pengajian yang sama adalah layak untuk memohon pengecualian bayaran balik pinjaman.

[51] Since the appellant had graduated with a First Class Honours in LLB Course and had been granted the educational loan before 1 July 2005 for the same course, we held that the 2003 Circular applies to the appellant. The appellant had rightly made the application for exemption as she undeniably falls under "mana-mana peminjam yang telah memohon pinjaman di peringkat Ijazah Sarjana Muda sebelum 1 Julai 2005 dan telah mendapat Kepujian Kelas Pertama pada peringkat pengajian yang sama."

[52] The respondent contended that the court is bound to accept the explanation given by the MQA that the certificate did not take effect retrospectively. With respect, we were not concerned with the explanation given or the stand taken by MQA. It was our task to interpret the 2003 Circular and having regard to all the above, we ruled that the issue of 2003 Circular not having the retrospective effect did not arise.

Conclusion

[53] The respondent's decision in rejecting the appellant's application for exemption based on the ground that the certificate of accreditation was not obtained during the period of the appellant's study (when the 2003 Circular is completely silent on when the certificate was to be obtained) went against the literal and plain reading of the 2003 Circular. The respondent in effect was adding an extra condition or requirement to the 2003 Circular, namely that the exemption can only apply to graduates who were undergoing their studies after the certificate of accreditation was issued.

[54] On the facts and in the context of the appeal, we found the respondent's decision in rejecting the appellant's application for exemption of repayment of the educational loan, irrational and unreasonable. We therefore unanimously allowed the appeal with no order as to costs.